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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-ninth session

SUMMARY RECORD OF THE 25th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 21 August 1997, at 3 p.m.

Chairman: Mr. BENGOA

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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF DRAFT RESOLUTIONS AND DECISIONS (continued)

Draft resolutions relating to agenda item 2 (E/CN.4/Sub.2/1997/L.21 and L.22)

Draft resolution E/CN.4/Sub.2/1997/L.21 (The situation of human rights in India)

1. Mrs. PALLEY recalled that, in paragraph 3 (b) of its resolution 1997/22, the Commission had requested the Sub-Commission "to limit action to exceptional cases in which new and particularly grave circumstances arise", and noted that that request must be read against the background of Economic and Social Council resolution 1235 (XLII) - by which the Sub-Commission was authorized to examine information relevant to gross violations of human rights and fundamental freedoms - and Commission resolutions 8 (XXIII) and 9 (XXIII), in which it invited the Sub-Commission to bring to its attention any situation which it had reasonable cause to believe revealed a consistent pattern of violations of human rights and fundamental freedoms.

2. Members of the Sub-Commission had, during the discussions at the present session, received a vast amount of information concerning gross violations of human rights in India and had had before them the reports of special rapporteurs and treaty bodies. Moreover, the gravity of the situation in India was clear from the publications and reports submitted by Amnesty International since 1990. When the matter had previously been raised in the Sub-Commission, the Indian Government had stated that the allegations made were exaggerated and emanated from terrorist supporters, that everything possible was being done to put an end to police and military violence in the provinces concerned, and that those responsible would be punished. Those promises had remained a dead letter. As at 30 June 1997, over 660,000 regular army troops and paramilitary forces had been stationed in Jammu and Kashmir and very few disciplinary measures had been taken to punish the guilty parties. India was the best example of the practice of impunity, which had been extensively discussed by the Sub-Commission. As for the institutions established to prevent violations of human rights, such as the National Human Rights Commission and the Human Rights Commission for Jammu and Kashmir, they were purely consultative bodies and had no power to undertake inquiries or take action. Moreover, Indian law excluded the possibility of any litigation, criminal or civil, against the armed forces without the Government's permission. The Sub-Commission had been informed by the Indian authorities that the Terrorist and Disruptive Activities Act had lapsed without, however, being told why it remained applicable to Jammu and Kashmir, where thousands of persons were still being detained under that Act pending trial.

3. Terrorism and the need to counter it did not justify torture or inhuman treatment, and the Sub-Commission should not allow its justifiable concern about human rights violations due to terrorist acts to obscure its obligation to monitor gross violations of human rights by Governments. Moreover, the argument that large undeveloped countries could do little to combat social, economic and cultural evils was completely unacceptable. Successive Indian Governments, despite their repeated promises, had done nothing tangible about the problem of the untouchables, the position of the dalits, or to put an end

to bonded and child labour, to contemporary forms of slavery, to the sexual exploitation of girls and to discriminatory practices. Only the decisions of the judges of the Supreme Court offered a ray of hope to the child labourers of India but government action necessary for their application was sadly lacking. The Government had stated that 287 children were working in the State of Bihar, whereas according to ILO and UNDP the actual number was between 14 and 100 million; moreover, 74 million children were left unaccounted for, being neither at school nor part of the labour force.

4. For that reason, to use the wording of Commission resolution 1997/22, India was an exceptional case since human rights violations were endemic and included police brutality, atrocious prison conditions, disrespect for life, and discrimination against women and girls. Moreover, there were "new circumstances", since additional violations of human rights occurred every day. The following figures had been reported by the Kashmir Bar Association for 1996: 3,289 Kashmiris, including 1,850 innocent civilians, killed by the security forces; 32,000 Kashmiris in prisons in India, of whom 218 had died in custody; 3,890 Kashmiris arrested, of whom only 697 had been released, to say nothing of the persistence of "special torture cells". Lastly, "particularly grave circumstances" indeed existed, since India was a democratic country with an educated elite, aware of such problems but preferring to turn a blind eye to corruption. She referred to the most recent example which confirmed the fact that particularly grave circumstances existed: during the current week, the National Human Rights Commission had been unable, for financial reasons, to conduct a Punjab-wide inquiry as planned into the allegations that the bodies of 25,000 young men had been cremated by the police or into the abduction and summary execution of a lawyer who had petitioned the courts to elucidate the circumstances of those cremations.

5. Lastly, she informed those who had referred to the dialogue established between other bodies and the Indian authorities that no continuing dialogue was taking place because India would present its next report to the Human Rights Committee and the Committee on the Elimination of Racial Discrimination only in three years. Furthermore, if States had not ratified the Optional Protocol to the International Covenant on Civil and Political Rights or recognized the competence of the Committee on the Elimination of Racial Discrimination under its article 14, only the Commission and Sub-Commission were competent to examine human rights violations in those States. For that reason, the Sub-Commission must recommend that the Commission should examine the human rights situation in India at its next session and she requested that the draft resolution under consideration should be put to the vote as soon as the discussion of the situation of human rights in India had been completed.

6. Mr. WEISSBRODT requested Mrs. Palley to withdraw draft resolutions E/CN.4/Sub.2/1997/L.21 and L.22, since in his view the Sub-Commission had at the present session reached its limit as regards consideration of draft resolutions concerning human rights violations in specific countries. It was undeniable that the human rights situation in India and Pakistan was a source of concern, but a genuine dialogue had been established with treaty bodies and action on the part of the Sub-Commission would not be advisable. He also drew attention to Guideline No. 10 contained in Sub-Commission resolution 1992/8 according to which when the Chairman found

that a draft resolution was not co-sponsored by at least four persons he could, in consultation with the officers, invite the author or co-sponsors to withdraw their draft.

7. Mrs. DAES, after paying tribute to the valuable contribution made by Mrs. Palley to human rights protection activities, also requested her to withdraw the draft resolutions in question, since the two countries in question had made real efforts to improve the human rights situation in their territory.

8. Mrs. PALLEY, speaking on a point of order, said that she had only submitted draft resolution E/CN.4/Sub.2/1997/L.21, and that the experts could therefore not present observations on draft resolution E/CN.4/Sub.2/1997/L.22.

9. Mrs. WARZAZI, supported by Mr. Fan Guoxiang, said that Mrs. Palley should have submitted the two draft resolutions at the same time in order to speed up the procedure. In view of the similarity of the two texts, experts were entitled to express their views on both at the same time.

10. Mr. FAN Guoxiang, supported by Mrs. ATTAH and Mrs. GWANMESIA, noted that the two draft resolutions were very similar and practically identical. He did not share the view that the Governments of the two countries had done virtually nothing to correct human rights violations over a period of 50 years. In his opinion it was neither fair nor true to say that no progress had been made since independence and that to do so constituted provocation not only for those States on the fiftieth anniversary of their establishment but also for all those which had achieved their independence more recently. He therefore called upon Mrs. Palley to withdraw the two draft resolutions.

11. Mr. GUISSE was of the view that the draft resolutions constituted a violation of the sovereignty of the States concerned and that the fiftieth anniversary of their independence, referred to in both texts, had nothing to do with human rights and the Sub-Commission's work. As for their substance, he noted that the wording was taken from the resolutions and recommendations of other United Nations bodies and therefore constituted pointless repetition. In his view, the Sub-Commission was engaged in a sterile debate which undermined its credibility in the eyes of States.

12. Mr. EL-HAJJE said that the Governments of the two countries concerned did not need the Sub-Commission to tell them how to act, since civil and political organizations in those two democracies could initiate a dialogue with the Government in order to correct any shortcomings. United Nations monitoring bodies were also engaged in continuing discussions with the Governments of India and Pakistan.

13. Mr. EIDE, referring to draft resolution L.21, noted that India was a large country that had succeeded in preserving a pluralist democracy in which the judiciary was in general independent. The existence of human rights problems was undeniable, but they were being tackled by the Government. He urged the latter, as well as all other Governments having to deal with violent groups, to ensure that discipline was strictly respected by members of the security forces and the police.

14. Mr. CHERNICHENKO, also referring to draft resolution L.21, wondered whether it was necessary to repeat the recommendations and conclusions of treaty bodies and special rapporteurs, particularly as the Indian Government was taking energetic steps to implement all those recommendations. He also wondered whether the problems faced by India, and of which the Indian Government was aware, could be resolved by yet another recommendation. Such problems could not be solved in a few years and the most prosperous countries themselves were experiencing difficulties in combating terrorism.

15. Mrs. ATTAH, noting that treaty bodies were engaged in discussions with the Governments of India and Pakistan about most of the matters raised in draft resolutions L.21 and L.22, was of the view that they should not be referred to the Commission on Human Rights for consideration. She was unfortunately unable to associate herself with the sponsor of the two drafts since the Governments in question had, in her view, done much to promote human rights.

16. Mr. EL-HAJJE, Mr. YIMER and Mr. EIDE supported Mr. Weissbrodt's request that Mrs. Palley should withdraw draft resolutions L.21 and L.22.

17. Mr. CHERNICHENKO and Mr. GUISSE said that they too would prefer Mrs. Palley to withdraw her draft resolution, but since she did not wish to do so, agreed that draft resolutions L.21 and L.22 should be voted upon.

18. Mr. ALFONSO MARTINEZ, supported by Mr. MAXIM and Mr. WEISSBRODT proposed, in accordance with rule 49 of the Sub-Commission's rules of procedure, the adjournment of the debate on draft resolution L.21; the Sub-Commission could then proceed with the submission and consideration of draft resolution L.22 and subsequently adopt a joint decision on the two drafts. Like Mr. Weissbrodt and the majority of experts, he said it would be preferable for the Sub-Commission not to vote on those draft resolutions.

19. Mrs. PALLEY said she opposed that proposal and wished to reply to her colleagues concerning the substance of the matter. For example, she failed to see why the Sub-Commission should be empowered to examine the human rights situation only in small countries such as Bahrain and Congo.

20. Mrs. GWANMESIA said that she too wished to express her views on draft resolution L.21.

21. Mr. YIMER pointed out that, under rule 50 of the rules of procedure, permission to speak on a motion for the closure of the debate on an item under discussion was accorded only to two representatives opposing the closure, after which the motion must be put to the vote immediately. He therefore proposed that the Sub-Commission should vote on the motion proposed by Mr. Alfonso Martínez.

22. A vote was taken by secret ballot.

23. At the invitation of the Chairman, Mr. Boutkevitch and Mr. Park acted as tellers.

24. The motion to close the debate on draft resolution E/CN.4/Sub.2/1997/L.21 was adopted by 22 votes to 2.

Draft resolution E/CN.4/Sub.2/1997/L.22 (Situation of human rights in Pakistan)

25. Mrs. PALLEY said she had based the draft resolution on information from various sources, namely, the Special Rapporteur on torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Working Group on arbitrary detention and the Special Rapporteur on religious intolerance of the Commission on Human Rights, the Committee on the Elimination of Racial Discrimination, the Pakistan Human Rights Commission, non-governmental organizations and the international press. All those sources referred to numerous violations of human rights and the virtual impunity of the police, the army, paramilitary groups and intelligence services. Such violations included arbitrary detention, torture, rape, enforced disappearances, extrajudicial executions and inhuman and degrading treatment of detained persons. Discrimination based on sex was still practised against women and young girls owing to the ideas advanced by certain theologians and the maintenance of laws promulgated during General Zia's military dictatorship. As for child and bonded labour, the law abolishing those practices had remained a dead letter despite the assurances given by successive Governments in Pakistan.

26. In the case of religious freedom, 130 persons were at present accused of apostasy, which automatically carried the death penalty. Such laws should be repealed since they encouraged extremism and fanaticism. The Ahmadi and Christian minorities, for example, were often the victims of violence and the police had not done much to protect them although during recent serious incidents the army had intervened to protect 20,000 Christians whose lives were threatened by extremists. She added, still on the question of minorities, that the new coalition Government under Mr. Nawaz Sharif had not put an end to the repression and serious human rights violations experienced by the Mohajirs. Moreover, the judicial inquiry into the executions carried out in Sindh had apparently not covered the massacres committed in that region after the departure of Mrs. Bhutto in November 1996.

27. Massive human rights violations had occurred in Pakistan since the publication of the reports she had mentioned at the beginning of her statement. They therefore constituted exceptional cases and involved new and particularly grave circumstances, and it was for that reason that she invited the Sub-Commission to transmit the draft resolution to the Commission.

28. In reply to the criticism addressed to her by certain experts, she said that the draft resolutions did not impinge on the work of human rights treaty bodies, and pointed out that India would submit its next report to the Human Rights Committee only in the year 2000. The reason why the two draft resolutions were similar was that the United Kingdom's legacy in the two countries comprised a number of nefarious traditions, and that a human rights violation was a violation regardless of where it was committed. Furthermore, she had emphasized the negative aspects of the situation in Pakistan and India because it was not for her to speak in praise of countries, even such a great democracy as India. Some experts had expressed the view that it was

undesirable to consider the situation in those two countries at a time when they were celebrating the fiftieth anniversary of their independence. Yet it was precisely an anniversary that very often offered an opportunity to take stock. The Indian Prime Minister himself had recently stated that it was well to reflect about all the time that had been lost during the country's 50 years of independence. As regards the question of national sovereignty, she recalled that the Sub-Commission had not only the right but also the duty to examine human rights violations in various countries whenever such violations were brought to its attention.

29. Since she had been reproached with being selective, she explained that she had not submitted a draft resolution in respect of other large countries where systematic human rights violations occurred because the situation in those States had already been examined by the Commission or had recently been the subject of one of its resolutions. As for the other large country to which reference had been made, she explained that adequate proof and evidence - as in the case of India and Pakistan - was not available.

30. She noted that Guideline No. 10 contained in Sub-Commission resolution 1992/8 stated that a draft resolution was kept on the agenda if the author or a single co-sponsor objected to its withdrawal. She emphasized that she alone assumed responsibility for the two draft resolutions, and had consulted none of her colleagues about them. In the past she had twice proposed draft resolutions mentioning India and Pakistan to the Sub-Commission and at that time only two experts had had the courage to support her. She also recalled that the Sub-Commission had decided not to examine in a systematic manner the reports of special rapporteurs on the situation in various countries. For a number of years India had been actively trying to do away with the Sub-Commission or at least to trim its wings. That was why she wished to draw attention to the situation in that country, and had not even tried talking to the Indian delegation, for that would have been pointless.

31. Mrs. GWANMESIA observed that, under article 19 of the Universal Declaration of Human Rights, everyone was granted the right to freedom of opinion and expression. Referring to the draft resolutions under consideration, she said it was her understanding that Mr. Alfonso Martínez had requested adjournment of the debate on draft resolution L.21, in accordance with rule 49 of the rules of procedure, after which the Sub-Commission would proceed to a vote on draft resolutions L.21 and L.22.

32. As for their substance, the two draft resolutions were ridiculous. Their preamble, the beginning of which was identical, emphasized the enormous responsibility of the United Kingdom for the problems now being faced by India and Pakistan. The text of draft resolution L.21 then reproached India for violating the rights of the Pakistanis while in draft resolution L.22 Pakistan was reproached with aggression against India. Moreover, the operative part of both drafts contained a paragraph which stated that the Sub-Commission "warmly welcomed" the efforts of the two countries to improve the situation. As she had already emphasized at the previous meeting, a resolution by the international community was not indispensable in certain cases, and therefore the two draft resolutions should be rejected.

33. Mr. GUISSE expressed the view that draft resolution L.22 was even more devoid of substance than draft resolution L.21. In the operative part, for example, the Sub-Commission would "welcome" and even "warmly welcome" the initiatives of the Government of Pakistan. The Sub-Commission was well aware that all the points mentioned in the text were taken from a document that had already been submitted to other United Nations bodies. Since the Sub-Commission had made an effort to trim its agenda in 1996, it should not now waste time on a draft resolution that could be regarded as offensive and that would certainly not reflect well on its work.

34. Mr. EL-HAJJE said that he personally sympathized with the people of Pakistan who, after travelling a difficult path since independence, was once again well on the road to democracy. That progress, as well as the efforts made by Pakistan in the regional cooperation context, should be recognized. Information concerning violence in that country, which nobody would deny was experiencing problems, had admittedly been presented, but since the Government was trying to improve the situation and the Pakistan Law Commission had decided to review certain laws, it was pointless for the Sub-Commission to adopt a draft resolution that would add nothing new.

35. Mrs. PALLEY observed that none of the comments made on two draft resolutions she had submitted really called for reply. Nevertheless she pointed out to Mr. El-Hajje that the Pakistan Law Commission had not proposed the revision of certain laws but had simply decided to study the possibility of doing so.

36. Mrs. WARZAZI, noting that although the two draft resolutions were not supported their author did not appear prepared to withdraw them, and therefore proposed that the Sub-Commission should adopt the following decision: "Decides not to adopt a position on the two draft resolutions E/CN.4/Sub.2/1997/L.21 and L.22".

37. Mr. EL-HAJJE supported the proposal.

38. The CHAIRMAN put to the vote Mrs. Warzazi's proposal that the Sub-Commission should not adopt a position on draft resolutions E/CN.4/Sub.2/1997/L.21 and E/CN.4/Sub.2/1997/L.22.

39. A vote was taken by secret ballot.

40. At the invitation of the Chairman, Mr. Fan Guoxiang and Mr. Khalil acted as tellers.

41. The proposal was adopted by 20 votes to 3 with 2 abstentions.

42. Mrs. WARZAZI, referring to all the draft resolutions considered under agenda item 2, said she wished to dissipate any doubts about the position of most members of the Sub-Commission on the situation of the Palestinian people. Draft resolution E/CN.4/Sub.2/1997/L.16 had not been considered at the previous meeting because its title was the same as that of the resolution adopted by the Commission on the subject. The draft decision consequently proposed by Mr. Bossuyt and adopted by the Sub-Commission was intended to maintain the decision adopted the previous year concerning methods of work

without rejecting draft resolution L.16. Since the Sub-Commission was not insensitive to certain new facts in connection with violations of the human rights of the Palestinian people, she had contacted other experts with a view to preparing a draft resolution of a humanitarian nature which would be submitted under agenda item 11 and entitled "Impact of the sealing-off of Palestinian territories on the enjoyment of the human rights of Palestinians".

Draft resolutions relating to agenda item 3

Draft resolution E/CN.4/Sub.2/1997/L.17 (Situation of migrant workers and members of their families)

43. Mrs. WARZAZI said that, as the draft resolution was self-explanatory, it should be possible to adopt it by consensus.

44. Mr. GUISSE, Mr. EL-HAJJE and Mr. DIAZ URIBE said they wished to become sponsors of the draft resolution.

45. Mr. ALFONSO MARTINEZ said that he too wished to become a sponsor but also wanted to make two observations. In the first place, in the third line of the third preambular paragraph of the Spanish text reference was made to "trabajadores migrantes" whereas the term used in the Convention was "trabajadores migratorios". That discrepancy should be corrected. Moreover, the words "under agenda item 3" should be added to the end of paragraph 13.

46. Mr. FAN Guoxiang said he was not opposed to the draft resolution under consideration but pointed out that the possibility of granting migrant workers dual nationality, mentioned in paragraph 7, was not feasible in all countries. That might raise difficulties for Governments and migrant workers themselves, since dual nationality implied not only rights but also obligations in respect of the two countries concerned. China in particular was not favourable to the idea.

47. Draft resolution E/CN.4/Sub.2/1997/L.17 was adopted without a vote.

Draft resolution E/CN.4/Sub.2/1997/L.20 (Racism and racial discrimination)

48. Mrs. McDOUGALL said that the names of Mrs. Attah and Mr. Khalifa should be added to the list of sponsors. Moreover, in the Russian text of paragraph 1, the words "... and appeals to States parties to the Convention to submit their reports to the Committee on the Elimination on Racial Discrimination in a timely manner" had been omitted. She hoped that the Sub-Commission would be able to adopt the draft resolution by consensus since it was sponsored by virtually all members.

49. Mr. ALFONSO MARTINEZ thanked Mrs. McDougall for her efforts in drafting a compromise text which he could unfortunately not support for three reasons. First, the emphasis throughout the operative part was placed more on the setbacks encountered during the Third Decade to Combat Racism and Racial Discrimination than on the successes achieved. Secondly, it was proposed in paragraph 10 that an expert seminar should be held in 1998 "without financial implications". It was common knowledge that that wording, which was now used as a matter of course, was connected with the financial crisis of the

United Nations but reflected a trend towards the privatization of the United Nations whose activities were to be financed with the help of special contributions by Governments. Participation in the seminar in question, for example, could be affected by the origin of the financial resources devoted to it. Thirdly, paragraph 11 was much too vague.

50. In conclusion, he requested a separate vote on paragraph 10 if it could not be amended, since the Sub-Commission would vote on the text as a whole.

51. Mrs. WARZAZI said that the words "without financial implications" in paragraph 10 could be deleted since that section of the operative part contained a simple proposal addressed to higher bodies.

52. Mrs. GWANMESIA thought that the Sub-Commission could adopt the draft resolution without a vote since Mrs. McDougall had consulted each expert during its finalization and the amendment requested by Mr. Alfonso Martínez did not raise any problem.

53. Draft resolution E/CN.4/Sub.2/1997/L.20, as amended, was adopted without a vote.

The meeting rose at 5.55 p.m.